June 15, 1917, excluded the plaintiff's publication from the mails on the grounds that such publication was in violation of Title 1, Section 3 of the same act. Plaintiff sought an injunction. *Held*, refused. *The Masses Pub. Co.* v. *Patten*, 246 Fed. 24 (C. C. A., 2d Circuit).

For a discussion of the principles involved, see NOTES, page 417.

DAMAGES — BREACH OF CONTRACT — LOSS OF PUBLICITY. — The plaintiff was an artist of rising renown, and had entered into a four-year contract with the defendant, the conductor of a well-known London music hall. There was no express term assuring the plaintiff opportunity to perform. But other clauses provided that the artist should not, for specified periods, perform at any other place of amusement within a specified radius of the music hall, etc. Defendant repudiated the contract during the first year of its intended duration, and the plaintiff sues for loss of salary and loss of publicity. *Held*, damages for loss of publicity are too remote to be recoverable. *Tuppin* v. *Victoria Palace, Limited*, [1918] 2 K. B. 539.

For breach of contract damages are either those naturally resultant, or what might reasonably be supposed to have been in the contemplation of both parties, at the time they contracted, as the probable result of the breach of it. *Hadley* v. *Baxendale*, 9 Exch. 341. But express terms are not necessary. *Marzetti* v. *Williams*, 1 B. & A. 415, 423. A contemplated term of contract is often inadvertently omitted where the happening of the event is unlikely, or where the term does not favor the party drawing up the contract. In saying that the contract is a good business arrangement without such contemplated term, the court fails to appreciate the importance of the contemplation of the parties. The peculiar value of publicity to a rising artist of such an engagement, in a city known as the key to artistic fame, is beyond question. Moreover, the articles of contract contemplate action, not inaction. Though perfectly possible for a contract to contemplate a "pinch hitter" or an "understudy" whose services are to be solely within the discretion of the employer, the principal case warrants a contrary decision. The exact point raised in the principal case was essential to the decision of a case of recognized authority and therein the peculiar situation of an actor was distinguished. *Fletcher* v. *Montgomery*, 33 Beav. 22. In failing to distinguish between the purely incidental tortious element in breach of contract and a uniquely valuable consideration, the court unfortunately contradicted the good precedents it admits as law, and, in an important case, drew the line on the wrong side.

ELECTIONS — INELIGIBILITY OF CANDIDATE RECEIVING HIGHEST VOTE — NOTICE TO ELECTORS. — The Direct Primary Law provided that no candidate who failed to receive the highest number of votes for the nomination of the political party with which he was affiliated thirty-five days before election should be entitled to be the candidate of any other political party. (1917 CAL. STATS. 1356). The candidate in question failed to receive the highest number of votes as candidate for Republican nominee, but did receive the highest number of votes as candidate for Democratic nominee. *Held*, that there was no nomination by the Democratic party. *Heney* v. *Jordan*, 175 Pac. 402 (Cal.).

The English and American authorities are agreed that if the candidate at an election who receives the highest number of votes is ineligible, and his ineligibility is not known to the voters at the time of casting their votes, such votes are not considered as nullities, but are effective to prevent the election of the candidate receiving the next highest number. *The King* v. *Bridge*, 1 M. & S. 76; *The Queen* v. *Hiorns* 7, A. & E. 960; *State ex rel. Goodell* v. *McGeary*, 69 Vt. 461, 38 Atl. 165; *Heald* v. *Payson*, 110 Me. 204, 85

Atl. 576. Some English and Irish cases, however, hold that if the electors merely have notice of the facts on which the candidate's ineligibility is based, they are presumed to know the law, and votes cast for such candidate are considered as thrown away. *Trench* v. *Nolan*, Ir. R. 6 C. L. 464; *Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 79. See *Drinkwater* v. *Deakin*, L. R. 9 C. P. 626. *Cf. The Queen* v. *Mayor of Tewkesbury*, L. R. 3 Q. B. 629. In the United States, however, votes cast for an ineligible candidate are not considered as nullities unless the electors are aware not only of the facts creating the disqualification but also of the law which makes the facts operate to disqualify. *People ex rel. Furman* v. *Clute*, 50 N. Y. 451; *Woll* v. *Jensen*, 36 N. D. 250, 162 N. W. 403; *Sanders* v. *Rice*, 102 Atl. 914 (R. I.). *Contra Gulick* v. *New*, 14 Ind. 93. *Cf. State ex rel. Clawson* v. *Bell*, 169 Ind. 61, 82 N. E. 69. Under the primary law in the principal case, the candidate who was duly affiliated with the Republican party could become Democratic nominee only if he also became Republican nominee. Nevertheless, at the time the votes were cast, the candidate in question was conditionally eligible and so, it seems, the court properly treated the votes cast for the highest candidate as effective to prevent the election of the next highest candidate. See 24 HARV. L. REV. 393.

INJUNCTIONS — INTERFERENCE WITH EMPLOYMENT. — The plaintiff sought to restrain a Local Draft Board from certifying him for military service, claiming as a basis for equity jurisdiction, that the interruption of his employment would deprive him of a property right. *Held*, that the right of employment is in no sense a property right. *Bonifaci* v. *Thompson*, 252 Fed. 878 (Dist. Ct. W. D. Wash. N. D.).

In labor controversies, one's employment is considered a property interest and an interference may be enjoined at the instance of the employee, though there be no contract of employment. *Erdman* v. *Mitchell*, 207 Pa. St. 79, 56 Atl. 327; *Fairbanks* v. *McDonald*, 219 Mass. 291, 106 N. E. 1000. Further, it has been held unconstitutional for a statute to provide that the right to do work as an employee shall be construed to be a personal and not a property right. *Bogni* v. *Perrotti*, 224 Mass. 152, 112 N. E. 853. Had the plaintiff been pursuing some occupation, an interference would also warrant an injunction.

Grannan v. *Westchester Racing Assn.*, 16 App. Div. 8, 44 N. Y. Supp. 790. The plaintiff may have held a public office, in which case no property interest would be involved. *Butler* v. *Pa.*, 10 How. (U. S.) 402. But to insist that the right to an employment in general is not based on a property interest seems to be placing too narrow a construction on the term "property." See Pound, "Equitable Relief Against Defamation and Injuries to Personality," 29 HARV. L. REV. 640. The decision, however, may be upheld on the ground that the court would not interfere with a board exercising functions under another department of the government.

JUDGMENTS — *RES ADJUDICATA* — JURISDICTION — DIVERSITY OF CITIZENSHIP. — The county of X in Missouri issued certain bonds. Y, a citizen of another state, sued on the bonds in a federal court, though the real owners were citizens of Missouri. Y secured judgment and kept it alive by subsequent judgments thereon. The last judgment was assigned to the relators, who applied for a writ of mandamus to compel the county judges to levy for and pay the last judgment. The defendants claim the judgments are void because of the colorable diversity of citizenship. *Held*, the writ will issue. *Bunch* v. *United States*, 252 Fed. 673 (C. C. A., 8th Circuit, Mo.).

In a second suit between the same parties, and on the same cause of action, every matter which had or might have been offered as a defense is ren-